



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-256166; B-256411

Date: May 30, 1995

DIGEST

1. Title 31, United States Code, section 3726 states that for a claim to be allowed by the Administrator of General Services it must be received not later than 3 years after payment of the transportation. When an agency paid the original bill on August 17, 1990, the 3-year period began to run on August 18, 1990, and ended on August 17, 1993. Therefore, a claim received by the Administrator on August 17, 1993, is timely.

2. The burden is on the claimant to present evidence of receipt of a claim in the proper office within the statutory period of limitations. In the absence of a clear proof of earlier actual receipt, the time and date indicated on an agency's time/date receipt stamp will be considered to be the time and date of receipt.

DECISION

Tri-State Motor Transit Company requests that we review the settlements of the General Services Administration (GSA) which disallowed its claims for additional charges on several government bill of lading (GBL) transactions because the firm did not present these claims to GSA in a timely manner as prescribed in 31 U.S.C. § 3726(a).¹ In pertinent part, 31 U.S.C. § 3726(a) provides that GSA must receive each claim "not later than 3 years . . . after the later of . . . payment for the transportation . . ." to consider it. The parties ask us to determine whether these claims were timely received at GSA. We find that some of Tri-State's claims were timely received, but most were not timely received. We affirm most of the settlements and reverse others.

¹GBL transactions under B-256166 and B-256411 involve claims forwarded for review or discussed in Tri-State letters to us dated December 23, 1993; January 27, 1994; January 31, 1994; March 21, 1994; March 18, 1994; March 29, 1994; April 19, 1994; May 4, 1994; April 22, 1994; June 2, 1994; and August 25, 1994.

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Tri-State presented these claims to GSA between August and October 1993. In denying Tri-State's claims, GSA relied on the date of its receipt stamp which it affixed to each claim when received. Generally, Tri-State contends that these stamps are inaccurate and that, in most cases, GSA received the claim prior to the stamped receipt date.

Tri-State's evidence that GSA actually received each claim earlier than admitted typically consists of a copy of a plain piece of paper with several GBL transaction numbers handwritten on it, and, in most instances, the notations on the paper included a handwritten reference to a shipment number and date of dispatch on Airborne Express or to a certified mail article number. This evidence is coupled with a copy of the cartage record from Airborne Express containing the signature of a known GSA employee next to the shipment number. The date of the cartage record is located at the top, and Tri-State argues that this date is sufficient evidence of the date on which all of the claims written on the plain piece of paper reached GSA. In other instances, Tri-State's evidence consists of a copy of a facsimile of the airway bill from Airborne Express containing the same data, or a Postal Service (PS) Form 3811 showing delivery of the certified article number to a known GSA employee and the date of receipt. Tri-State contends that these business records are sufficient evidence to establish the inaccuracy of GSA's stamp. However, nothing in the cartage record, the facsimile, or the PS 3811 identified the specific contents by GBL or other transaction number. In each instance, a fact finder must accept, with little corroboration, that the shipment or certified mail article contained the specific claims alleged by Tri-State.

GSA affirms the accuracy of its time/date stamp and directs our attention to an inconsistency in some of Tri-State's business records. GSA identified eight of the firm's Public Vouchers for Transportation Charges (Standard Form 1113) which Tri-State had dated after the date on which it contends it gave the SF 1113 and supporting documents (the claim) to Airborne Express for submission to GSA. We found the same inconsistency in other transactions,² and note that Tri-State included claims in its request for review that were clearly barred.³

The burden is on the claimant to present evidence of receipt of a claim in the proper office within the statutory period of limitations; the claimant must establish the clear legal liability of the United States and his right to payment. See Peralta Shipping Corporation, B-197661, May 22, 1980. To overturn GSA's finding that the claims were presented on

²Tri-State prepared its bills on September 29, 1993, for some claims, but it gave them to Airborne on September 28, 1993. Some examples include: C-7,657,034; C-7,657,035; and C-7,657,041.

³Tri-State's own evidence indicates that GSA received two claims 2 days after the third anniversary after the date of payment. These claims involve GBL transactions C-7,912,766 and C-7,912,779.

the dates indicated by the time/date stamps, Tri-State must present clear and convincing contrary evidence.⁴ See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978). In this case, Tri-State's business records do not constitute clear and convincing evidence sufficient to overcome the inference that the agency's date stamp is the best evidence of the date of actual receipt, because they lack notations tying the particular contents of each delivery to Tri-State's records of the date and the recipient of the delivery. See, for example, Chelsea Clock Company, Inc., B-251348.2, May 24, 1993, 93-1 CPD ¶ 401, where failure to present objective evidence of the contents of a package was one factor in rejecting a company's claim of delivery prior to the date indicated by the agency's evidence.

Accordingly, we confirm GSA's settlements except for those noted hereafter.

In two categories, we found that Tri-State filed timely claims. One of these categories consists of those claims where GSA's date stamp indicates that it received Tri-State's claim on the third anniversary after the date of payment. The other consists of one claim in which there is other evidence of timely receipt at GSA.

In prior decisions, we have not specifically considered whether a carrier's claim is timely if it is received by the Administrator of General Services or his designee exactly 3 years to the day after the date of payment. However, comments on the subject in our prior decisions appear to be in conflict. In discussing the time limitation for review in the predecessor statute (49 U.S.C. § 66) to 31 U.S.C. § 3726, we stated that if a claim accrued on March 15, 1974, the carrier had until March 16, 1977, to file its request for review. See Trans Country Van Lines, Inc., 57 Comp. Gen. 157 (1977). But our discussion in another decision suggested that a carrier's claim would have been barred exactly 3 years after the claim accrued, and that the last day for timely receipt was the day before this third anniversary. See 51 Comp. Gen. 201, 203 (1971).

The wording of the time limitation in 31 U.S.C. § 3726(a) varies somewhat from the wording we considered in these two decisions. In these decisions 49 U.S.C. § 66, the predecessor to 31 U.S.C. § 3726, provided that a claim had to be received "within three years . . . from the date of . . . payment. . . ." Subsection 3726(a) provides that it has to be received "not later than 3 years after" payment. Public Law 97-258, the law which enacted Title 31 of the United States Code into positive law, including 31 U.S.C. § 3726, indicated that no substantive change was intended;⁵ however, the current language is more

⁴In this respect, the burden on the claimant here is easier than the burden on the bidder who offers a sealed bid to the government where the only acceptable evidence of the government's receipt is the time/date stamp. See 48 C.F.R. § 14.304-1(c).

⁵Pub. L. No. 97-258, 96 Stat. 877 (1982); see also H.R. Rep. No. 97-651, 97th Cong., 2d Sess. 1 (1982).

consistent with the interpretation that the day of the third anniversary after the date of payment is the last day in which the Administrator or his designee can receive a timely claim for transportation charges.

In similar contexts, the weight of authority appears to be that, in the absence of a specific statutory provision, the day on which a cause of action accrues is not included in the time limitation. See 20 A.L.R. 2d 1249, 1250. And in continuing claims subject to the Barring Act, 31 U.S.C. § 3702(b)(1), we held that the claim is barred only to the extent that it accrued before the date 6 years prior to the day on which the claimant presented it. See Frederick C. Welch, 62 Comp. Gen. 80 (1982).⁶

Accordingly, we believe that for the purposes of 31 U.S.C. § 3726(a) the limitations period should run from the day after the date of payment through the third anniversary of the payment date and this date is the last day to timely file a transportation claim.⁷

Tri-State requested our review of GSA's disallowances of several claims involving this same issue which were presented to us after we developed this matter. It would appear that our holding here would be dispositive of this issue as addressed by Tri-State and GSA in these claims, and GSA should re-audit these claims in accordance with this decision. We are closing these files without further action.⁸

The other category of timely received Tri-State claims involves only one GBL transaction, C-5,593,988, in which there is clear evidence of timely receipt. The original payment date on this transaction was September 27, 1990, and GSA's date stamp is September 17, 1993.

GSA should settle these claims in accordance with this decision.

/s/ Seymour Efros

⁶While not relevant to this issue, the holding in Frederick C. Welch that a claim under 31 U.S.C. § 3702 can only be presented to our Office no longer applies because we changed our regulations in 1989 to permit its presentation to the interested agency.

⁷Some examples in this category include D-0,581,533; C-8,054,230; C-0,895,577; C-7,751,040; C-7,751,041; D-0,581,277; D-1,038,665; C-8,826,054; and D-1,065,417.

⁸These claims are included in our files: B-259737, B-259739, B-259745, B-259746, B-259752, B-259753, and B-259761. The Military Traffic Management Command noted other statute of limitations issues in B-259753, but we do not decide them at this time because the record is insufficient.

for Robert P. Murphy
General Counsel